IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
W.P.NO.2638 OF 2004

1. Handmaids of the Sacred Heart of Jesus Society Juhu Road, Mumbai-400 049
2. Dilkhush Special School Juhu Road, Juhu ..Petitioners

Vs.

1. The Spl. District Social Welfare Officer 4th floor, Administrative Bldg. Ramkrishna Chemburkar Road, Chembur (E) Mumbai-400071
2. The State of Maharashtra through Govt. Pleader, High Court O.S.Mumbai ..Respondents

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Mr.J.Reis Senior Counsel with Mr.A.G.Kothari
Advocate for Petitioners
Mr.L.T.Satelkar AGP for Respondents

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CORAM: F.I.REBELLO AND
SMT.V.K.TAHILRAMANI,JJ.
DATE : JULY 25, 2006

ORAL JUDGMENT :(PER F.I.REBELLO,J.)

1. Heard. Rule heard forthwith.

2. The petitioner No.1 is Trust registered under the Bombay Public Trust Act, 1950. The petitioner No.2 runs a School which imparts education to mentally handicapped students. In para 2, the petitioners have set out that on 19.8.1971, the petitioner No.1

was established by Roman Catholic Trustees professing and practising Christianity as their religion and the founding Trustees of the petitioner No.1 were Roman Catholic priest and nuns. It is also set out that ever since the inception, the Trustees of petitioner No.1 have been priests and nuns who practise and profess Christianity as their religion. The names of the past Trustees of petitioner no.1 have been set out as also of the present Trustees. The dominant aim and objects of the Petitioner Trust are to provide education to the mentally handicapped children. The management and control of the society is vested in the governing body which necessarily includes Superior, Vice Superior and Principal of the Institution as ex-officio members. These persons are appointed by their religious orders and are necessarily nuns. A person can become a member only on the invitation of the governing body and not otherwise. The management and control of the Institution is vested in the governing body comprising of catholic priests and nuns. The population of Roman Catholics in the State of Maharashtra, as pointed out is less than 5% of the total population of the State and therefore the petitioner no.1 is a religious minority institution

as defined under Article 30(1) of the Constitution of India.

3. Petitioner No.2 was established in 1971 as it was found that a large number of children with mental retardation had no place to go for schooling as "normal" schools had closed their doors to them. Petitioner No.2 school was recognised and was granted aid by Respondent No.1 in 1975. For the purpose of special needs of the students, the petitioner No.1 started teachers training centre which is also recognised by the State Government and which imparts training in special education. There are other departments which have been set up by the petitioners. The petitioners contend that the State Government issued a Circular dated 20.11.2001 directing that vacancies in staff be filled from backward class candidates by making special efforts and that the Institutions which were not fulfilling the directions, would be liable to action of stoppage of grants. By letter dated 27.5.2004 Petitioner No.2 was called upon to fill up and to appoint reserved category candidates. Petitioners then set out that they were informed that if the same was not done within seven days, action of stoppage of grants would

be initiated. There has been subsequent correspondence to that effect. The petitioners replied pointing out that they were unable to accede to the requisition of the Respondents as they were minority Institution. The Respondents have withheld the grant-in-aid by way of salary of their staff and this has been intimated to the Respondents. There have been subsequent correspondences exchanged between the parties. The reliefs prayed for in this petition are to quash the various orders and for declaration that the Petitioners are entitled to choose the professors/staff of their choice and they are not bound to effect the appointments based on the reservation policy of the State Government. They have also sought further directions.

. A reply has been filed on behalf of the Respondents by Yashwant Sonu More, Special Welfare Officer. It is set out therein that it is the policy of Government not to award minority status to Institutions which are schools for special category students like mentally challenged children because, it is not correct for these types of Institutions to restrict admissions only to a particular community children but to all the children who are suffering

from disabilities. It is further set out that the petitioners are deliberately avoiding to fill up posts from reserved category.

. The petitioners in reply thereto, have furnished the names of the students who are admitted, which would show that 47 students profess the Hindu faith, 22 profess the Muslim faith and 15 profess Catholic faith. In other words, admission is not restricted to only students professing a particular religion.

4. The limited issue before us is whether the Respondents can direct the petitioners if it be a religious minority running Petitioner No.2 institution, to follow the reservation policy of the State Government. A full Bench of this Court in case of **St.Francis De Sales Education Society, Nagpur V. State of Maharashtra and another, 2002(1) Bom.C.R. (F.B.) 650,** took the view that the reservation policy would not be applicable to religious minority institution. The matter again came up for consideration subsequent to the judgment in **T.M.A. Pai,** before another Bench of this Court in the case of **Sindhu Education Society Vs. State of Maharashtra and others, 2006(1) Bom.C.R.898** wherein the learned

Bench of this Court reiterated that the reservation policy would not be applicable to minority institution. It is, therefore, clear that the stand taken by the Respondents that reservation policy is applicable is contrary to the law laid down by the Full Bench and subsequent judgment of the Division Bench of this Court.

5. The only other issue which requires to be considered is whether a special School run by religious minority Institution is entitled for protection under Article 30(1) of the Constitution. Article 30(1) of the Constitution of India confers a right on a minority institution to establish and administer educational institutions. It reads thus:

. "All minorities whether based on religion or language, shall have the right to establish and administer educational institutions of their choice".

. It is, therefore, clear that the only requirement is that the Institution must be an educational

Institution. Once it be an educational institution, the right of the religious and linguistic minority to establish and administer, cannot be fettered by the State, except as to the restrictions which can be legally imposed. One of the tests in answering the issue would be, is there a law in the State which recognises an institution as an educational institution. Further even if there be such law, whether institution which are outside the law can be considered as an educational institution. Once they meet the test of an educational institution, Article 30(1) would apply.

. In **N.Ammad Vs. Manager, Emjay High Schools and others (1998) 6 S.C.C. 674,** the Apex Court was considering the issue of recognition of minority institution. In the matter of recognition, the Apex Court has observed that:

. " When the Government declared the school as a minority school, it has recognised a factual position that the school was established and is being administered by a minority community. The declaration is only an open acceptance of a legal

> character which should necessarily have existed antecedent to such declaration. Therefore, we are unable to agree with the contention that the school can claim protection only after the Government declared it as a minority school on 2.8.1994".

. From the averments in the petition, it is clear that the catholic (Christan) community constitutes less than 5% of the population in the State of Maharashtra. The institution was established by members professing the catholic faith. It has been and is being administered by the members professing the catholic faith. In other words, the establishment and administration of the institution is fully under the control of a religious minority with the aim and object of imparting education to a disabled group of children with values which they held. The petitioners have satisfied all the requirements to be recognised as a minority institution. The Respondents therefore, could not have directed the Petitioner No.2 to follow the reservation policy of the State in the matter of

employment as set out earlier in the judgment.

. In the light of that, the petition has to be allowed accordingly. Rule made absolute in terms of prayer clauses (a) and (b). The Respondents are further directed to release the salary of the teachers and staff whose names are set out in Exhibit-J to the petition from the time they were entitled to, till date and thereafter go on paying the same according to law. The respondents shall pay all arrears, not later than three months from today, failing which the amount will carry interest at the rate of 8% from the date the amounts were due till final payment.

[F.I.REBELLO, J.]

[SMT.V.K.TAHILRAMANI,J.]